IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT APPEAL NO.1 OF 2003
IN
CONTEMPT PETITION NO.194 OF 1994

1. Municipal Corporation of Greater Mumbai, a Body Corporate constituted under the Bombay Municipal Corporation Act, 1888, having its office at Mahapalika Marg, Fort, Mumbai - 400 001.
2. Sahebrao Gadge Patil, then Ward Officer "N" Ward.
3. Shri Venkatrao Shankar Jadhav, then Deputy Municipal Commissioner (Z-III).
4. Shri A.K. Chawla, then Assistant Engineer (Bldg. & Fact.) "N" Ward.
5. Shri Vazirani, Sub-Engineer, "N" Ward.

... Appellants (Orig. Respondents)

Versus

Hemalata Jadhavji Kothari, adult, Indian Inhabitant of Bombay, residing at Hem Apartment, 5th floor, Hirji, Keshavji Compound, Ghatkopar, Bombay – 400 077.

... Respondent

Mr. A.J. Bhoir for the appellants.

None for the respondent.

CORAM : SMT. RANJANA DESAI & A.P. DESHPANDE, JJ.

DATED : 26TH JULY, 2006.

ORAL JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. In this contempt appeal, the judgment and order dated 6/6/2002

passed by the learned single judge of this court in Contempt Petition No.194 of 1994 is under challenge.

2. It appears that the respondent, who is the original plaintiff has filed L.C. Suit No.8827 of 1989 against appellant 1. It is the respondent's contention that she is in possession of a tin shed admeasuring 22.6” x 15 situated near Kailash Bhuvan, 39, Vallabhbaug Cross Lane, Ghatkopar, Bombay - 400 077. According to her, the said structure was in existence for more than 40 years. Appellant 1 issued a notice dated 18/11/1989 under section 351 of the Bombay Municipal Corporation Act for demolition of the said shed. The respondent contended that the said notice was illegal and not binding upon her. In the circumstances, she filed the said suit challenging the said notice. In the said suit, she took out a notice of motion and prayed for ad-interim relief by way of injunction restraining appellant 1 from demolishing the said shed.

3. The trial judge declined to grant any ad-interim relief. Being aggrieved by the said order, the respondent filed an appeal from order being Appeal from Order No.943 of 1989 in this court. By order dated 11/1/1990, this court restrained appellant 1 from demolishing the said structure till disposal of the notice of motion. According to the respondent, despite this order, the officers of appellant 1 demolished the said shed on 2/3/1994. The respondent, therefore, filed Contempt Petition No.194 of 1994.

4. The appellants did not file any affidavit in reply. The learned single

judge, therefore, rightly observed that all the averments made in the petition have gone unchallenged. He observed that undisputedly this court had passed an order dated 11/1/1990 restraining appellant 1 from demolishing the said shed till disposal of the notice of motion and, therefore, it was obligatory on the part of appellant 1 to maintain the status-quo in respect of the said shed till disposal of the notice of motion. The learned single judge was not impressed by the contention raised on behalf of the appellants that they were not aware of the order dated 11/1/1990. In the circumstances, the learned single judge held the appellants guilty of committing contempt of court and sentenced them to pay a fine of Rs.1000/- each, in default, to undergo simple imprisonment for one month. This order is challenged in this appeal.

5. We have heard Mr. Bhoir, the learned counsel appearing for the appellants. He contended that in fact the appellants were not aware of the order dated 11/1/1990 passed by this court and it is in these circumstances that the demolition of the said shed took place. He submitted that in fact, it is because the order was not communicated to the appellants that the said shed came to be demolished. There was no intention to disregard the order of this court and, therefore, the impugned order be set aside.

6. We are not impressed by the submissions of the learned counsel. We concur with the learned single judge that since the affidavit in reply is not filed by the appellants, the averments made in the petition have gone unchallenged and will have to be accepted as true. It is inconceivable that the

appellants would have no knowledge about the order dated 11/1/1990 till 2/3/1994. The learned counsel for the appellants is not in a position to state that the counsel for the appellants had not put in his appearance from 11/1/1990 till the date of demolition i.e. till 2/3/1994. Besides nothing prevented the appellants from refuting the respondent's case by filing their reply and stating that they had no knowledge of the order. The appellants have shown a callous approach. Case of contempt is clearly made out.

7. We are also distressed to note that the appellants did not even tender apology to the court. The learned counsel appearing for the appellants tried to tender the apology in this court. We are unable to accept such a belated apology. We record the statement of the learned counsel for the appellants that the appellants have paid the fine which was ordered to be paid under the impugned order. For the aforestated reasons, we find no merit in the appeal. Appeal is dismissed. Needless to say that the civil application also stands disposed of.

[SMT. RANJANA DESAI, J.]

[A.P. DESHPANDE, J.]